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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/532,771

02/06/2006

Angus Peter Robson

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8721

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7590

12/13/2007

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EXAMINER

SMITH, SCOTT A

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

12/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,771

Applicant(s)

ROBSON, ANGUS PETER

Examiner

Scott A. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007 and 29 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 49, 50, 52, 53, 56-58 and 60-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 49, 50, 52, 53 and 56-58 is/are allowed.
- 6) ☒ Claim(s) 60-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendments filed on 10/4/09 and 10/29/07 have been entered and the remarks therein have been considered.

Double Patenting

Claim 62 is objected to under 37 CFR 1.75 as being a duplicate of claim 61. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Accordingly, one of claims 61 and 62 should be canceled since they are identical.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 49, 50, 52, 53, 56-58 and 60-62 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims recite a "drive mechanism for reciprocating the hammer". However, the disclosure merely discloses a means for lifting the hammer via the chain, wherein the hammer thereafter drops due to gravity. This doesn't properly constitute a mechanism "for reciprocating", per se, which requires a means for providing

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movement in two opposite directions. Since gravity is not patentable, and the means by which the hammer is caused to move in a downward direction is gravity, the present invention lacks a "mechanism for reciprocating". Perhaps replacing "lifting" for "reciprocating" would alleviate the rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minotti et al. '317 in view of Lamoureux et al. '365.

Minotti et al. 317 discloses the invention substantially as claimed and associated method of operation thereof including a housing 56, 58, 62 having an opening at an end 60 thereof, a hydraulic drive mechanism 12 for "reciprocating" a hammer 16, 88 and mounted in the housing, wherein the apparatus is connected to a machine 20 via an articulating arm. However, Minotti et al. '317 lacks the hammer lock. Lamoureux et al. '365 discloses a hammer 2, 22 reciprocable in housing 1, and lockable in a variety of desired axial positions via a locking mechanism including an eccentric portion 13 and an actuator 15. In view of the teachings of Lamoureux et al. '365, it would have been obvious to one skilled in the art to provide the apparatus of Minotti et al. '317 with the

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claimed hammer lock in order to secure the hammer relative to the housing in a desired position during for example an auxiliary operation, or during apparatus transport.

Claims 60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. '500 in view of Lamoureux et al. '365.

Greene et al. '500 discloses the invention substantially as claimed including a housing 53 having an opening at an end 96 thereof, a chain drive mechanism 54 including a dog 65 cooperating with a hammer projection 66 for "reciprocating" a hammer 55 and mounted on the housing, wherein the apparatus is connected to a machine 20 via an articulating arm. However, Greene et al. '500 lacks the hammer lock. Lamoureux et al. '365 discloses a hammer 2, 22 reciprocable in housing 1, and lockable in a variety of desired axial positions via a locking mechanism including an eccentric portion 13 and an actuator 15. In view of the teachings of Lamoureux et al. '365, it would have been obvious to one skilled in the art to provide the apparatus of Greene et al. '500 with the claimed hammer lock in order to secure the hammer relative to the housing in a desired position during for example an auxiliary operation, or during apparatus transport.

Allowable Subject Matter

Claims 49, 50, 52, 53 and 56-58 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

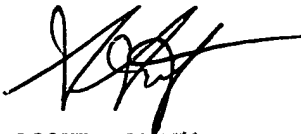
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott A. Smith whose telephone number is 571-272-4469. The examiner can normally be reached on 5:30-4:00 Tues.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

S. Smith



SCOTT A. SMITH
PRIMARY EXAMINER